

REMARKS/ARGUMENTS

Claims 1 and 4-28 are pending. By this Amendment, claims 7-14 and 19-27 are amended, and claim 28 has been added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

At the outset, Applicants appreciate the courtesies extended by Examiners Patel and Bennett to Applicants' representative during a personal interview conducted on August 9, 2006. During the interview, it was agreed that the proposed changes to claims 7 and 14 (incorporated herein) would place the application in condition for allowance subject to an updated search. See the Interview Summary dated August 9, 2006. As compared to the amendment presented during the interview, claim 14 has been amended to remove the last "wherein" clause since this was not apparently relevant to the agreement reached during the interview. The deleted language has been reincorporated as new dependent claim 28.

Claims 7, 9-19 and 22-27 were rejected under 35 U.S.C. §103(a) over Replogle (U.S. Patent No. 3,117,574) in view of Wright (U.S. Patent No. 4,657,010). This rejection is respectfully traversed.

With respect to claim 7, the Replogle/Wright combination fails to teach a nasal mask having a relatively rigid mask frame and a relatively softer cushion provided to the frame, the cushion comprising an outer membrane including a face contacting portion to form a seal with the patient and an underlying rim positioned below the membrane. Replogle does not teach or suggest an outer membrane and an underlying rim positioned below the membrane. Wright does not make up for this deficiency.

In addition, the Replogle/Wright combination does not teach or suggest that the cushion includes a nasal bridge region, a top lip region, and two side regions. Neither Replogle nor

Wright teaches or suggests a top lip region, since both are directed toward full face mask whereas claim 7 (as amended) effectively describes a nasal cushion.

Although Replogle/Wright fails to teach all of the elements recited in claim 7, claim 7 is amended to even further distinguish over this combination since the claims are now directed to a nasal mask with a frame and a cushion provided to the frame. Neither reference discloses a cushion with an outer membrane and an underlying rim formed and positioned with respect to one another to accommodate a pre-adult and/or a small sized adult patient, and the cushion includes a nasal bridge region, a top lip region and two side regions, as agreed during the personal interview.

With respect to independent claim 14, the Replogle/Wright combination does not teach headgear including first and second straps each provided with a yoke that extends along a major portion of the first and second straps so as to form a co-extensive, layered structure, each said yoke being constructed and arranged to accommodate a pre-adult and/or a small sized adult patient, as agreed during the personal interview.

With regard to claim 15, the Replogle/Wright combination fails to teach or suggest first and second straps each adapted to be provided to the mask frame of the mask, wherein each of the first and second straps includes an at least partially coextensive yoke, each of the first and second straps along with its respective yoke having co-located and unitary upper and lower portions, each said yoke being constructed and arranged to accommodate a pre-adult patient in the range of 2-6 years. Neither Replogle nor Wright teaches or suggests this subject matter. Similar remarks apply to claim 16.

The dependent claims are patentable by virtue of their dependency on the allowable independent claims, and for the further features they recite. It is noted that, in reference to dependent claims 9 and 22, dependent claims 10 and 23, dependent claims 11 and 24, and dependent claim 18, the Office Action takes the position that the Examiner found no criticality regarding the recited dimensions, and therefore concludes that each of these dimensions is simply a matter of design choice. However, the Office Action has failed to establish a *prima facie* case of obviousness with respect to any one of these claims, since the Examiner has not even attempted to state that it would have been obvious to one of ordinary skill in the art to have modified the prior art to arrive at the claimed dimensions. Moreover, the claimed dimensions have been selected for reasons described in the specification.

Moreover, as explained in Applicants' March 14, 2005 and December 14, 2005 Amendments, Applicants' specification establishes that the claimed dimensions do in fact have significance. For example, as described in paragraph 77 of the original application, the design of adult masks typically takes into account body mass and racial nose characteristics. For example, the East Asian-shaped nose typically has a lower nasal region compared with the Caucasian-shaped nose. However, Applicants discovered that below the ages of 5-7, there are few racial distinctions in children. In particular, neonates, infants and young children have no nasal bridge. Not only do children have smaller heads and faces than adults, their heads and faces are differently shaped. In accordance with an aspect of the invention, a system of mask and headgear sizes has been developed in which a minimal set of components can be used to fit the widest range of people. See original paragraph 77 of the specification.

Moreover, Table 4 appearing on page 11 of the original application further exemplifies that the claimed dimensions are not mere obvious design choices. For example, dimensions A,

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B, C and D are tabulated for a related art mask (ResMed's Vista® Mask) against three embodiments of the present invention. Noteworthy is the fact that the dimensions A-D are not simply shrunk as compared to the Vista Mask, rather dimensions A, B, C and D can be smaller than and in some cases larger than the dimensions for a Vista® Mask.

Reconsideration and withdrawal of the rejection are respectfully requested.


Applicants appreciate the indication that claims 1 and 4-6 are allowed and claims 8, 20 and 21 are indicated to define patentable subject matter if placed into independent form. However, in view of the above amendments and remarks, and the agreement reached during the personal interview, Applicants respectfully submit that all the claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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